



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

August 16, 2006

Mr. Vance Hobbs
CENAB-OP-RMN
U. S. Army Corp of Engineers
Baltimore District
P.O. Box 1715
Baltimore, MD 21203-1715

Re: Draft Environmental Impact Statement (DEIS) for the Proposed Masonville Dredged Material Containment Facility, Baltimore, Maryland: CEQ No 20060184 and the Supplement to the Draft Environmental Impact Statement (SDEIS) for the Proposed Masonville Dredged Material Containment Facility, Baltimore, Maryland. CEQ No 20060269.

Dear Mr. Hobbs:

In accordance with the National Environmental Policy Act of 1969 (NEPA), Section 309 of the Clean Air Act, and Section 404 of the Clean Water Act (CWA); the U.S. Environmental Protection Agency (EPA) has reviewed the above referenced documents. The DEIS evaluates the potential to construct a Dredged Material Containment Facility (DMCF) capable of receiving material dredged from the Baltimore Harbor Channels north of the North Point-Rock Point line in the Patapsco River, evaluates a series of alternatives for this type of structure, the environmental impacts associated with the proposed alternative, and describes a compensatory mitigation plan for the proposed project. We offer the following comments.

The Baltimore Harbor and Channels Dredged Material Management Plan (DMMP) and Tiered EIS (USACE 2005) concluded that multiple DMCF's would be necessary to meet the Harbor placement need over the next 20 years. This DEIS evaluates the no action alternative and 3 alternative sites for DMCF's to satisfy Harbor material placement needs beginning in 2009. The three sites evaluated for the potential to meet the dredged material shortfall in the near term were Masonville, Sparrows Point and BP-Fairchild. The Masonville site (final feasibly alignment # 3) is identified as the preferred alternative for a DMCF in the DEIS and 404 permit application. EPA has rated the "no action" alternative which would not develop the Masonville DMCF as "LO" (Lack of Objection). The "no action" alternative as described would either potentially defer the scheduled dredging activities or result in the need to place materials at Hart and Miller Island or the Cox Creek DMCF's through 2009. We have assigned the rating of "EC" (Environmental Concerns) to the remaining three alternatives which include the proposed DMCF at Masonville and the potential DMCF's at Sparrows Point and BP-Fairchild in the Patapsco River. EPA has also

rated the overall adequacy of the DEIS as “2” (Insufficient information). A copy of the EPA EIS rating system is enclosed for your reference.

EPA recognizes the DEIS is the result of recommendations in the Dredged Material Management Plan (DMMP) which was developed over several years with significant agency and public input. Despite the fact that EPA has served on various committees involved in this process, we continue to have serious concerns with several major aspects of the Masonville proposed alternative; including the potential impacts associated with the placement of fill into a large area of the Patapsco River.

Alternatives

EPA appreciates that the Harbor Team and related Committees (e.g., the Bay Enhancement Work Group (BEWG)) spent considerable time and effort in developing, evaluating and screening alternatives for managing dredged material from the Harbor channels. The proposed project (i.e., dredged material disposal) does not require access or proximity to, or siting within, a special aquatic site to fulfill its basic project purpose (i.e., is not “water dependent”). However, given the legislative and operational constraints faced by the applicant, the need for disposal capacity in the near term, and the potential hazards to navigational safety which could occur without the proposed dredging; we believe that the applicant’s identification of the Masonville site as the preferred alternative is justifiable.

Environmental Impacts

EPA has serious concerns with the environmental impacts of the proposed project on the Patapsco River and ultimately the Chesapeake Bay ecosystem. Construction and subsequent placement of fill at the Masonville site for Final Feasibility Alignment # 3 will result in the permanent loss of 130 acres of tidal open water habitat, 1 acre of vegetated wetlands, and 10 acres of upland in the Chesapeake Bay critical area buffer. The DEIS acknowledges that the proposed project will have significant long term adverse impacts to fisheries, essential fish habitat (EFH) and benthic communities from the placement of fill into tidal open water. Significant long term adverse impact will result to fisheries from the loss of tidal open water habitat. Although some benthic conditions in the area were determined to be degraded, other areas met restoration goals for the Harbor. There will be the permanent loss of 0.38 acres of submerged aquatic vegetation (SAV) and 10 acres of Tier I/II Habitat for SAV within the DMCF footprint. The ecosystem functions and values of this tidal open water habitat and associated aquatic resources will be permanently lost due to construction of the DMCF at Masonville.

CWA Section 404

A Section 404 evaluation is to be completed for the project and included in the FEIS. EPA requests the opportunity to review this evaluation prior to finalization of the FEIS and/or before any permit is issued for the proposed project.

The mitigation plan included in the DEIS for unavoidable impacts is currently still under development. The total cost of the draft conceptual mitigation plan provided in the DEIS was estimated to be \$12.5 million. We understand concerns have been raised by other resource agencies and local interests regarding the adequacies of proposed mitigation and public access to Masonville Cove with which we are in agreement. Our review has determined that the proposed plan does not include the commitment of funds for the maintenance of the Masonville Cove portion of the mitigation plan. Concerns were raised during early coordination meetings with the Maryland Port Authority (MPA) and resource agencies that the Masonville Cove mitigation site would be continuously degraded by erosion and by sediment and trash deposition, reducing the long term mitigation value of the site. To address these concerns, EPA recommended MPA set aside a permanent fund to ensure a dedicated and continual funding source for maintenance of the restoration project. This recommendation is consistent with and meets the goals and intent of the Clean Water Act (CWA) which are “to restore and maintain the physical, chemical, and biological integrity of the nation’s waters”. Since the preferred alternative for the Masonville DMCF will permanently remove 130 acres of waters of the U.S., the mitigation proposed to offset this loss of aquatic resources should provide a permanently dedicated source of funds to maintain the proposed mitigation area. The dollar amount of the fund set-aside needs to be evaluated by the applicant and should reflect an adequate source of funding to continually maintain all components of the approved mitigation project. The mitigation plan should be developed, and final approval received by the resource agencies, prior to inclusion into the Final Environmental Impact Statement (FEIS) and before the issuance of the Section 404 permit for the project. EPA will work with the Corps and MPA to develop the final mitigation and maintenance plan that addresses our concerns and adequately mitigates for the environmental impacts of the proposed DMCF.

Consistent with the State of Maryland’s approach with private applicants whereby a payment is required for the value of uplands created from filling regulated waters, we suggest that the funds set aside for the Masonville mitigation maintenance, when added to other proposed mitigation costs, should equate with the economic value of the upland created by the Masonville fill. The applicant should be willing to commit to an adequate and equitable mitigation plan taking into consideration the economic value of the land created by this fill. In the future EPA believes that the issue of the economic value of the land created by a fill, a cost to a private applicant, should be included in the comparative evaluation of the alternatives in order to evaluate all the alternatives fairly. It is incumbent upon MPA to assure that the projects which are undertaken by the Authority have minimal impacts to public resources and that the mitigation undertaken for these projects has real and long term effects with a goal of overall watershed improvements.

Air Impacts

A Conformity Study and Conformity Plan is required by the Clean Air Act since emissions during construction and placement of dredged materials will exceed the 100 tons per year (tpy) NO_x threshold. A thorough assessment of emissions from the proposed project to meet the requirements for the Federal conformity decision should be included in the FEIS. It is requested that the plan be submitted to EPA for review and comment prior to inclusion into the FEIS.

Cumulative Impacts

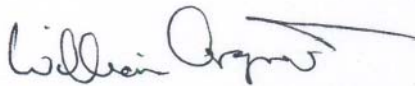
Cumulative impacts result from the incremental impact of the proposed action when added to other past, present, and reasonably foreseeable future actions regardless of which agency or person undertakes such actions. The cumulative impacts analysis has determined that implementation of the DMMP, in conjunction with past placement activities, utilizing the Masonville, Sparrows Point and BP-Fairfield sites for dredged material over the next 20 years has the potential to result in the loss of 2,085 acres or 4.9 % of the tidal open water habitat in the Patapsco River. EPA is extremely concerned with the potential for such a large loss of tidal open water in the Patapsco River system or elsewhere in the Chesapeake Bay region. While an appropriate mitigation plan is being developed to offset the impacts of the Masonville DMCF, we strongly believe that future further filling of waters of the U.S. at the magnitude proposed would not comply with the applicable EPA and Corps regulatory review guidelines. Accordingly, EPA recommends that any dredge and fill permit issued for the Masonville DMCF have a condition requiring the applicant to vigorously pursue viable innovative use alternatives for the future disposal of dredged material (see below).

Innovative Use

Currently MPA is committed to identifying a strategy to manage 0.5 million cubic yards (mcy) of dredged material annually through cost-effective and safe innovative uses by 2023. New dredging and maintenance work generates approximately 1.5 mcy of dredged material annually. The development of innovative uses or reuse of dredged material has the potential to avoid and/or minimize impacts on the environment and aquatic resources by reducing or eliminating the future need for the additional DMCF's, e.g. Sparrows Point and BP-Fairchild DMCF sites. To this end we recommend that the regulatory agencies and MPA collaboratively develop a Memorandum of Agreement to achieve innovative uses and reuses of larger quantities of dredged materials in a shorter time frame. A dedicated source of funding needs to be committed to advance innovative use alternatives as well. Initial funding as part of the mitigation plan for the Masonville project needs to be seriously considered. EPA commits to be an active partner to develop an agreement that will protect our valuable natural resources in the Patapsco River and Chesapeake Bay watershed and provide a solution to dredged material disposal needs in the long term.

Thank you for the opportunity to provide comments on the DEIS and Joint Permit application for the Masonville DMCF. Until an appropriate mitigation and management plan is submitted and approved, EPA recommends that the Corps hold the Section 404 permit in abeyance. Should you have any questions regarding our comments concerning the NEPA process, please contact me at (215) 814 3367 or Marria O'Malley Walsh the principal reviewer of the project at (570) 628-9685. Should you have questions concerning Section 404 permitting issues please contact Jim Butch at (215) 814-2762.

Sincerely,

A handwritten signature in black ink, appearing to read "William Arguto", with a long horizontal stroke extending to the right.

William Arguto
NEPA Team Leader

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